U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 9342762

Date: AUG. 3, 2020

Motion on Administrative Appeals Office Decision

Form I-129, Petition for L-1A Manager or Executive

The Petitioner seeks to continue employing the Beneficiary as its executive manager under the L-1A nonimmigrant visa classification for intracompany managers and executives. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L).

The Director of the California Service Center denied the petition, and we dismissed the Petitioner's following appeal. *See Matter of M-I- Corp.*, ID# 6503963 (AAO Nov. 6, 2019). We agreed with the Director that the Petitioner did not demonstrate its claimed, qualifying relationship with the Beneficiary's foreign employer or its proposed U.S. employment of him in a requisite managerial or executive capacity. We also found that, contrary to regulation, the Petitioner did not provide evidence of the financial status of its U.S. operations.

The matter is before us again on the Petitioner's motion to reconsider. The Petitioner bears the burden of establishing eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon review, we will dismiss the motion.

I. MOTION CRITERIA

A motion to reconsider must establish a prior decision's misapplication of law or U.S. Citizenship and Immigration Services (USCIS) policy based on the record at the time of the decision. 8 C.F.R. § 103.5(a)(3). We may grant a motion to reconsider that meets these criteria and demonstrates eligibility for the requested benefit.

II. THE MOTION TO RECONSIDER

A. Qualifying Relationship

The Petitioner asserts that the Beneficiary owns his former employer in China. The Petitioner also contends that it submitted a stock ledger and other documentation of a qualifying relationship between itself and the Chinese company.

As indicated in our appellate decision, however, the record contains discrepancies regarding the ownership of both the Beneficiary's foreign employer and the Petitioner. On the L Classification Supplement to Form I-129, the Petitioner initially stated that an individual other than the Beneficiary owns the Chinese company. Also, in response to the Director's written request for additional evidence, the Petitioner submitted a November 2017 resolution by the foreign entity's "board of shareholders," listing eight attendees. The resolution suggests that multiple people own the Chinese company. Thus, evidence indicates the Chinese company's ownership by the Beneficiary, by another individual, and by multiple individuals. A petitioner must resolve inconsistencies of record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). The record lacks evidence explaining the discrepancies or establishing the ownership of the Chinese company.

The petitioning corporation also has not documented its ownership. The Petitioner submitted a copy of a stock certificate indicating the foreign entity's purchase of the Petitioner's initial 1,000 shares of stock in 2016. But copies of the Petitioner's federal income tax returns for 2016 and 2017, and a 2017 application for a business license, identify the Beneficiary as the company's sole owner. *See Matter of Ho*, 19 I&N Dec. at 591 (requiring a petitioner to resolve inconsistencies of record). The Petitioner has not explained why the stock certificate indicates the foreign entity's ownership of the Petitioner, but the other documents identify the company's sole owner as the Beneficiary. The record also lacks corporate documentation that would identify stock transfers or issuances of additional shares by the Petitioner. The Petitioner claims that it submitted a stock ledger. But the only stock ledger of record corresponds to the U.S. company that the Petitioner bought. That ledger does not provide information about the Petitioner's stock, but rather about the stock of the purchased company before its acquisition.

The Petitioner argues that "[c]ontrol is the key, not majority ownership." But a qualifying relationship requires a combination of both control and ownership of entities. *See, e.g., Matter of Church Scientology Int'l*, 19 I&N Dec. 593 (Comm'r 1988). If the record does not establish the owners of the Petitioner and the foreign entity, we cannot even begin to determine who controls the entities. Because the Petitioner has not documented the ownership of the foreign entity or itself, it cannot establish a qualifying relationship between the two companies. *See* 8 C.F.R. § 214.2(l)(14)(ii)(A) (requiring a petitioner seeking extension of a "new office" petition to demonstrate that the U.S. and foreign entities "are still qualifying organizations").[1]

The record does not establish a qualifying relationship between the Petitioner and the Beneficiary's former employer. We will therefore dismiss this portion of the motion and affirm the appeal's dismissal.

B. Nature of the Proposed U.S. Employment

The Petitioner asserts that our appellate decision incorrectly focused on the company's number of employees. Citing a 1989 unpublished decision of ours, the Petitioner notes that a beneficiary may serve in a managerial or executive capacity even if he or she is a petitioner's sole employee.

[1] The term "new office" refers to an organization that has been doing business in the United States for less than one year. 8 C.F.R. § 214.2(l)(1)(ii)(F).

Our unpublished decisions do not bind us in other matters. *See* 8 C.F.R. § 103.10(b) (stating that only precedent decisions bind USCIS employees in proceedings involving the same issues). Moreover, in the case cited by the Petitioner, the record documented the beneficiary's supervision and control over the work of several contractors who performed the operational duties of the business. Here, the Petitioner did not document sufficient resources that would allow the Beneficiary to primarily focus on managerial- or executive-level duties. The Petitioner contends that employees of the foreign entity "are dedicated exclusively to supporting the growth of the group's business in the United States." But the record does not indicate which foreign employees would support the Beneficiary or what their job duties are. The record also lacks examples of their work and explanations of who would perform their duties for the foreign entity while they serve the Petitioner. *See Matter of Z-A-, Inc.*, Adopted Decision 2016-02 (AAO Apr. 14, 2016) (holding that a beneficiary would work in a primarily managerial capacity in the United States where a petitioner documented that overseas staff in Japan would help support him). Additionally, as noted above, the Petitioner has not established the qualifying relationship between the two companies to demonstrate that the company has foreign employees who would support the Beneficiary's work.

The Petitioner also asserts that we used staffing levels in determining the nature of the proposed employment without considering the organization's needs in light of its purpose and developmental stage. *See* section 101(a)(44)(C) of the Act.

The Petitioner correctly indicates that we cannot determine the managerial or executive nature of an offered position based solely on the number of employees the position would supervise or direct. But "size is nevertheless a factor" in assessing whether a company's operations are substantial enough to support a manager or an executive. *Brazil Quality Stones, Inc. v Chertoff*, 531 F.3d 1063, 1070 (9th Cir. 2008). Here, a quarterly payroll tax return indicates the Petitioner's employment of only two workers at the time of the petition's filing. As previously indicated, the Petitioner did not document purported, additional support from employees of the Chinese company. In addition, the record did not indicate the Petitioner's ability to hire additional U.S. employees or contractors. The Petitioner's 2017 federal income tax return reflects the company's generation of only about $8,000 in revenues, which allegedly supports employment of three workers. The record therefore did not establish the Petitioner's possession of sufficient resources to relieve the Beneficiary from the performance of non-qualifying, operational duties. *See* 8 C.F.R. § 214.2(l)(3)(v)(C) (requiring a new office petitioner to demonstrate its ability to support a manager or executive within one year of the approval of its initial petition). We therefore did not improperly base on our decision solely on the number of employees the Beneficiary would supervise or direct. We also considered other factors, including the support of foreign workers and the Petitioner's ability to hire additional resources.

The Petitioner has not demonstrated its proposed employment of the Beneficiary in a managerial or executive capacity. We will therefore also dismiss this portion of the motion.

III. CONCLUSION

The Petitioner has not demonstrated its claimed, qualifying relationship with the Beneficiary's foreign employer or its proposed U.S. employment of him in a managerial or executive capacity. We will therefore affirm the appeal's dismissal, and the petition will remain denied.

ORDER: The motion to reconsider is granted in part and dismissed in part.